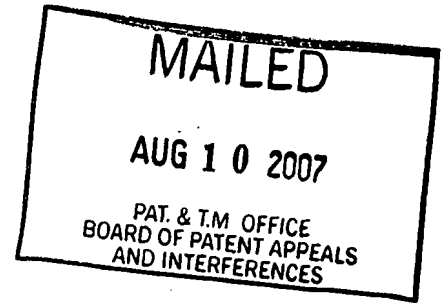


UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ADRIAN LUNGU

Application No.09/839,803



ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences (BPAI) on July 31, 2007. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

On April 18, 2006, the Examiner mailed a Final rejection. On page 1 of the rejection number 6) indicates that claims 1, 3-19, and 31-33 are rejected. However, the examiner did not mention in his final rejection or in the Examiner's Answer the rejection of claim 40. An Amendment filed on January 27, 2006, added claim 40. It is unclear as to what is the status of claim 40. Clarification is required.

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A review of the file indicates that on September 19, 2006, Appellant filed an Appeal Brief and on December 19, 2006, Appellant filed an amended Appeal Brief under the rules set forth in 37 CFR § 41.37(c). However, the Appeal Brief and amended Appeal Brief do not fully comply with the new rules under 37 CFR § 41.37(c).

37 CFR § 41.37(c) states in part:

(c)(1) The brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(I) through (c)(1)(x) of this section, except that a brief filed by an appellant who is not represented by a registered practitioner need only substantially comply with paragraphs (c)(1)(I) through (c)(1)(iv) and (c)(1)(vii) through (c)(1)(x) of this section:

(v) ***Summary of claimed subject matter.*** A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters. For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of paragraph (c)(1)(vii) of this section, every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

(ix) ***Evidence appendix.*** An appendix containing copies of any evidence submitted pursuant to §§ 1.130, 1.131, or 1.132 of this title or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was

entered in the record by the examiner. Reference to unentered evidence is not permitted in the brief. See § 41.33 for treatment of evidence submitted after appeal. This appendix may also include copies of the evidence relied upon by the examiner as to grounds of rejection to be reviewed on appeal.

(x) ***Related proceedings appendix.*** An appendix containing copies of decisions rendered by a court or the Board in any proceeding identified pursuant to paragraph (c)(1)(ii) of this section.

An in-depth review of the Appeal Brief and amended Appeal Brief indicates that the following sections are deficient:

- 1) “Summary of Claimed Subject Matter,” as set forth in 37 CFR § 41.37(c)(1)(v);
- 2) “Evidence Appendix,” as set forth in 37 CFR § 41.37(c)(1)(ix); and
- 3) “Related Proceedings Appendix,” as set forth in 37 CFR § 41.37(c)(1)(x).

It is required that a supplemental Appeal Brief be submitted that is in compliance with 37 CFR § 41.37(c).

Accordingly, it is ORDERED that the application is returned to the Examiner to:

- 1) hold the Appeal Brief filed on September 15, 2006 and amended Appeal Brief filed on December 19, 2006, defective;
- 2) notify Appellant to file a supplemental Appeal Brief in compliance with

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37 CFR § 41.37;

- 3) to vacate the Examiner Answer mailed April 23, 2007, in response to the Appeal Brief and amended Appeal Brief, submit a revised Examiner's Answer in response to the supplemental Appeal Brief if appropriate;
- 4) to vacate the Examiner's Answer mailed April 23, 2007, and issue a revised Examiner's Answer to include all claims and the grounds in which they are rejected under; and
- 5) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCE



PATRICK J. NOLAN
Deputy Chief Appeals Administrator

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